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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,427	07/25/2003	David W. Plank	6273US	2338

30173 7590 03/25/2005

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EXAMINER	
PADEN, CAROLYN A	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/627,427	PLANK ET AL.	
	Examiner	Art Unit	
	Carolyn A Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 February 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13,17-22 and 27-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *11,12,17 and 21* is/are allowed.

6)☒ Claim(s) *1-10,13,18-20 and 27-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6-10, 13, 18-20, 22 & 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Qi in view of Baileys for reasons of record.

Applicant argues that Qi fails to teach mixing cyclodextrin with oil in an amount effective to thicken the fat or oil and that Qi only uses a small amount of cyclodextrin in his product. The argument has been considered but is not persuasive. Firstly, applicant argues process limitations that do not carry any weight in product claims. Secondly the product claims only require a very small amount of cyclodextrin. The fact that Qi does not disclose the viscosity of the product is not seen to carry any patentable weight because the ratio of the ingredients appears to be the same. Applicant has amended the claims to include hydrated cyclodextrin but Qi hydrates his cyclodextrin by adding water to it in example 1.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Qi in view of Swern as applied to claims 1-3, 6-10, 13,

18-20, 22, 27-30 are above, and further in view of Takada for reasons of record.

Applicants' arguments are directed to the concept of thickening the composition and this argument was discussed above.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roderbourg in view of Swern for reasons of record.

Applicant argues that Roderbourg was not intended for food use. This argument has been considered but is not persuasive because the intended use of a product does not alone carry any patentable weight. Applicant also argues that Baileys does not teach thickened fat. But Baileys is relied upon to provide evidence of the lack of trans from natural fat. Although the aspect of thickening the composition is not specifically mentioned in Roderbourg, the composition is clearly thickened because the cooled mixture is "churned" a low temperatures (column 6, line 30). Clearly the mixture has thickened because it must be churned as opposed to simple mixing.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-8, 10, 13, 18, 19, 22, 27, 28 & 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Saito as further evidenced by Baileys and also as further evidenced by Giordano.

Applicant argues that Saito does not contemplate preparing a thickened oil or fat but rather is processing the product into a tablet. This has been considered but is not persuasive because a tablet is certainly thicker than liquid oil. Applicant has amended the claims to suggest a hydrated cyclodextrin but cyclodextrin is typically marketed in its hydrated form as shown by Giordano. Thus one of ordinary skill in the art would expect that the Saito cyclodextrin was hydrated at the time it was purchased.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6-8, 10, 13, 18, 19, 22, 27, 28 & 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito as further evidenced by

Baileys for reasons of record used in rejecting the claims under 35 USC 102 in the last office action and as further evidenced by Giordano or Maggi.

The claims appear to differ from Saito in the recitation that the cyclodextrin is hydrated cyclodextrin but cyclodextrin is typically marketed in its hydrated form as shown by Giordano. Thus one of ordinary skill in the art would expect that the Saito cyclodextrin was hydrated at the time it was purchased. If this argument is not sufficient, further evidence is provided by Maggi, who shows hydrating cyclodextrin by adding water and also shows that both hydrated and non-hydrated cyclodextrin show use in forming tablets. Thus with the references before him, one of ordinary skill in the art would have expected that the Saito tablet could contain hydrated cyclodextrin as an obvious variant of cyclodextrin. Applicant argues that Saito does not contemplate preparing a thickened oil or fat but rather is processing the product into a tablet. This has been considered but is not persuasive because a tablet is certainly thicker than liquid oil.

Applicants' response to the Plank rejection under 35 USC 103 and under obviousness-type double patenting is sufficient to overcome the rejections. Also examiner appreciates applicants' complete response to the requirement for restriction.

Claims 11, 12, 17 & 21 are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden

CAROLYN PADEN 3-18-05
PRIMARY EXAMINER 1761